

<sup>2</sup> The Board notes that, following the December 3, 2020 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

meniscus tear causally related to the accepted August 23, 2019 employment injury; and (2) whether OWCP abused its discretion by denying appellant's requests for authorization of a left knee injection and right knee surgery.

### **FACTUAL HISTORY**

On August 23, 2019 appellant, then a 49-year-old corrections officer, filed a traumatic injury claim (Form CA-1) alleging that on that date he sustained injuries to his knees as a result of a partial floor cave-in while in the performance of duty. OWCP accepted the claim for bilateral knee contusions.

In a report dated September 5, 2019, Dr. Robert H. Miller, a Board-certified orthopedic surgeon, diagnosed bilateral knee contusions. He noted that on August 23, 2019 appellant was walking on an elevated floor when his right leg fell through the floor. Appellant landed on his kneecaps. Since that time, he had significant pain in both knees, left worse than right. Appellant told Dr. Miller that he had previous intermittent pain and swelling in the left knee requiring him to use a cane and that he had been given a cane several years prior "for preexisting knee arthritis."

A magnetic resonance imaging (MRI) scan of the left knee obtained on September 26, 2019 demonstrated a small free edge tear in the body of the lateral meniscus and mild and moderate patellofemoral compartment osteoarthritis.

In a follow-up report dated January 30, 2020, Dr. Miller noted that an MRI scan of the left knee demonstrated a small free edge tear in the body of the lateral meniscus and low-grade chondral loss in the lateral compartment. He advised that appellant should treat his arthritis with continued therapy, anti-inflammatories, a cortisone injection, and he would attempt to obtain approval for a hyaluronic acid injection.

An MRI scan of appellant's right knee obtained on February 13, 2020 demonstrated a horizontal tear of the posterior horn and body of the medial meniscus and mild tricompartmental osteoarthritis. It was also noted that the medial collateral ligament was thickened proximally consistent with a remote injury.

In a follow-up report dated March 5, 2020, Dr. Miller noted that the MRI scan of appellant's right knee demonstrated a horizontal tear of the posterior horn body of the medial meniscus and mild tricompartmental osteoarthritis. He recommended right knee surgery and a hyaluronic acid injection to the left knee, to which appellant agreed.

On March 9, 2020 appellant requested authorization for right knee surgery.

In a development letter dated March 11, 2020, OWCP advised appellant that, at that time, the proposed right knee surgery could not be approved. It found that the request for surgery did not match his approved condition of right knee contusion. OWCP requested that appellant submit a narrative report from his physician explaining how the new diagnosis of right knee meniscus tear was causally related to the accepted traumatic injury. It afforded him 30 days to submit the requested evidence.

On April 2, 2020 appellant requested authorization for a left knee injection.

In a development letter dated April 8, 2020, OWCP advised appellant that, at that time the proposed left knee injections could not be approved. It found that the request for a left knee injection did not match his approved condition of left knee contusion. OWCP requested that appellant submit a narrative report from his physician explaining how the new diagnosis of left knee osteoarthritis was causally related to the accepted traumatic injury. It afforded him 30 days to submit the requested evidence. No response was received within the time allotted.

By decision dated May 18, 2020, OWCP denied appellant's request to expand the acceptance of his claim to include left knee primary osteoarthritis as causally related to the accepted August 23, 2019 employment injury and denied his request for authorization for a left knee injection.

By separate decision also dated May 18, 2020, OWCP denied appellant's request to expand the acceptance of his claim to include a right knee medial meniscus tear as causally related to the accepted employment injury and denied his request for authorization for right knee surgery.

On June 2, 2020 appellant, through counsel, requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

On October 5, 2020, counsel submitted the results of a May 12, 2015 MRI scan, which demonstrated minimal lateral compartment chondromalacia and minimal chondromalacia of the patella and minimal signal in the posterior horn of the medial meniscus, likely reflecting intrasubstance degeneration. He also enclosed a note dated September 30, 2020 from Dr. Miller in which he described the results of the May 12, 2015 MRI scan.

A hearing was held on October 8, 2020. The hearing representative afforded appellant 30 days to submit additional medical evidence.

In a narrative report dated November 5, 2020, Dr. Miller noted that appellant's claim was currently accepted for bilateral knee contusions. He opined that the acceptance of the claim should be expanded to include an aggravation of left knee primary osteoarthritis and a left lateral meniscus tear, as well as a right horizontal tear of the posterior horn and body of the medial meniscus, which was "possibly caused by the accident" and right knee osteoarthritis "possibly aggravated by the accident." Dr. Miller noted that, when appellant fell on August 23, 2019, he twisted his knees and slammed into the floor, which due to appellant's height and weight could have created sufficient torque and force to tear the menisci in his knees and possibly aggravate his preexisting degenerative arthritis. He noted that an MRI scan from 2015 did not show any tears in the menisci, though there was a minimal signal in the posterior horn of the right medial meniscus. Dr. Miller noted that there were no injuries between the 2015 MRI scan and the August 23, 2019 incident, and no injuries after that incident. He stated that medical literature supported that trauma like the type appellant experienced could make preexisting arthritis worse. Dr. Miller opined that the left knee injections were necessary to avoid surgery.

By decision dated December 3, 2020, the hearing representative affirmed the May 18, 2020 decisions.

## **LEGAL PRECEDENT -- ISSUE 1**

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.<sup>3</sup>

Causal relationship is a medical question that requires rationalized medical opinion evidence to resolve the issue.<sup>4</sup> A physician's opinion on whether there is causal relationship between the diagnosed condition and an accepted injury must be based on a complete factual and medical background.<sup>5</sup> Additionally, the physician's opinion must be expressed in terms of a reasonable degree of medical certainty and must be supported by medical rationale which, explains the nature of the relationship between the diagnosed condition and the accepted employment injury.<sup>6</sup>

Section 8103 of FECA provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce the degree, or the period of disability, or aid in lessening the amount of the monthly compensation.<sup>7</sup> In interpreting this section of FECA, the Board has recognized that OWCP has broad discretion in approving services provided under FECA.<sup>8</sup> OWCP has the general objective of ensuring that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time. It, therefore, has broad administrative discretion in choosing means to achieve this goal. The only limitation on OWCP's authority is that of reasonableness.<sup>9</sup> Abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.<sup>10</sup>

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<sup>3</sup> A.A., Docket No. 19-1165 (issued December 16, 2019); M.B., Docket No. 19-0485 (issued August 22, 2019); R.J., Docket No. 17-1365 (issued May 8, 2019); Jaja K. Asaramo, 55 ECAB 200 (2004).

<sup>4</sup> E.M., Docket No. 18-1599 (issued March 7, 2019); Robert G. Morris, 48 ECAB 238 (1996).

<sup>5</sup> M.V., Docket No. 18-0884 (issued December 28, 2018); Victor J. Woodhams, 41 ECAB 345, 352 (1989).

<sup>6</sup> *Id.*

<sup>7</sup> 5 U.S.C. § 8103.

<sup>8</sup> M.C., Docket No. 17-1615 (issued August 23, 2018).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

### **ANALYSIS -- ISSUE 1**

The Board finds that appellant has not met his burden of proof to expand the acceptance of the claim to include additional conditions of left knee primary osteoarthritis and a right medial meniscus tear as causally related to the accepted August 23, 2019 employment injury.

In his September 5, 2019 report, Dr. Miller diagnosed bilateral knee contusions, and noted that appellant had related he had been given a cane some years prior for preexisting left knee arthritis. This report merely diagnosed the accepted bilateral knee contusions, but did not offer Dr. Miller's diagnosis of any other bilateral knee conditions. The Board has held that a medical report lacking a firm diagnosis and a rationalized medical opinion that the medical condition is causally related to the employment incident is of no probative value.<sup>11</sup> Therefore, Dr. Miller's report is insufficient to establish appellant's request for expansion of the claim.

In a narrative report dated November 5, 2020, Dr. Miller noted that appellant's claim was currently approved for bilateral knee contusions. He opined that the acceptance of the case should be expanded to include an aggravation of left knee primary osteoarthritis and a left lateral meniscus tear, as well as a right horizontal tear of the posterior horn and body of the medial meniscus, which was "possibly caused by the accident" and right knee osteoarthritis "possibly aggravated by the accident." Dr. Miller noted that, when appellant fell on August 23, 2019, he twisted his knees and slammed into the floor, which due to appellant's height and weight could have created sufficient torque and force to tear the menisci in his knees and possibly aggravate his preexisting degenerative arthritis. He noted that an MRI scan from 2015 did not show any tears in the menisci, though there was a minimal signal in the posterior horn of the right medial meniscus. Dr. Miller noted that there were no injuries between the 2015 MRI scan and the August 23, 2019 incident, and no injuries after that incident. He stated that medical literature supported that trauma like the type appellant experienced could make preexisting arthritis worse. Dr. Miller opined that the left knee injections were necessary and could avoid surgery. The Board finds that Dr. Miller's November 5, 2020 report is insufficient to establish appellant's request for expansion of the claim. Dr. Miller's explanation that appellant's left knee osteoarthritis and right knee meniscal tear were "possibly" secondary to the August 23, 2019 incident is speculative in nature. The Board has held that medical opinions that are speculative or equivocal are of diminished probative value.<sup>12</sup> While Dr. Miller provided a possible explanation as to how the incident of August 23, 2019 caused or aggravated appellant's left knee primary osteoarthritis and a right medial meniscus tear, his opinion was couched in speculative terms, and did not fully address appellant's history and preexisting bilateral knee conditions. In any case where a preexisting condition involving the same part of the body is present and the issue of causal relationship, therefore, involves aggravation, acceleration or precipitation, the physician must provide a rationalized medical opinion that differentiates between the effects of the work-related injury or disease and the preexisting

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<sup>11</sup> *J.P.*, Docket No. 20-0381 (issued July 28, 2020); *R.L.*, Docket No. 20-0284 (issued June 30, 2020).

<sup>12</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Developing and Evaluating Medical Evidence*, Chapter 2.810.5(c)(3); *D.S.*, Docket No. 20-0384 (issued October 8, 2020); *H.A.*, Docket No. 18-1455 (issued August 23, 2019).

condition.<sup>13</sup> In addition, while Dr. Miller noted that medical literature supported a finding that appellant's diagnosed conditions could have been caused by the type of trauma he experienced, the Board has held that reliance on medical literature has little probative value in resolving medical questions unless a physician shows the applicability of the general medical principles discussed in the articles to the specific factual situation at issue in the case.<sup>14</sup> Therefore, Dr. Miller's November 5, 2020 report is insufficient to meet appellant's burden of proof.<sup>15</sup>

OWCP also received MRI scan reports. The Board, however, has held that diagnostic tests, standing alone, lack probative value as they do not provide a physician's opinion on whether there is a causal relationship between appellant's accepted employment incident/exposure and a diagnosed condition.<sup>16</sup> This evidence is, therefore, insufficient to establish expansion of his claim.

As the evidence of record is insufficient to establish causal relationship between his additional diagnosed medical conditions and the accepted employment injury, appellant has not met his burden of proof to expand the acceptance of his claim.

### **LEGAL PRECEDENT -- ISSUE 2**

Section 8103(a) of FECA<sup>17</sup> provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed by or recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.<sup>18</sup> While OWCP is obligated to pay for treatment of employment-related conditions, the employee has the burden of proof to establish that the expenditure is incurred for treatment of the effects of an employment-related injury or condition.<sup>19</sup>

Section 10.310(a) of OWCP's implementing regulations provide that an employee is entitled to receive all medical services, appliances, or supplies which a qualified physician prescribes or recommends and which OWCP considers necessary to treat the work-related injury.<sup>20</sup>

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<sup>13</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3e (January 2013); *M.B.*, Docket No. 20-1275 (issued January 29, 2021); *see R.D.*, Docket No. 18-1551 (issued March 1, 2019).

<sup>14</sup> *S.J.*, Docket No. 20-0896 (issued January 11, 2021); *R.G.*, Docket No. 18-0917 (issued March 9, 2020); *T.S.*, Docket No. 18-1518 (issued April 17, 2019); *K.U.*, Docket No. 15-1771 (issued August 26, 2016); *Roger D. Payne*, 55 ECAB 535 (2004).

<sup>15</sup> *See C.B.*, Docket No. 20-0464 (issued July 21, 2020).

<sup>16</sup> *See P.A.*, Docket No. 18-0559 (issued January 29, 2020); *A.P.*, Docket No. 18-1690 (issued December 12, 2019); *R.M.*, Docket No. 18-0976 (issued January 3, 2019).

<sup>17</sup> *Supra* note 1 at § 8103(a).

<sup>18</sup> *Id.*; *see D.S.*, Docket No. 18-0353 (issued May 18, 2020); *L.D.*, 59 ECAB 648 (2008); *Thomas W. Stevens*, 50 ECAB 288 (1999).

<sup>19</sup> *M.P.*, Docket No. 19-1557 (issued February 24, 2020); *M.B.*, 58 ECAB 588 (2007).

<sup>20</sup> 20 C.F.R. § 10.310(a); *see D.W.*, Docket No. 19-0402 (issued November 13, 2019).

In interpreting section 8103 of FECA, the Board has recognized that OWCP has broad discretion in approving services provided, with the only limitation on OWCP's authority being that of reasonableness.<sup>21</sup> OWCP has the general objective of ensuring that an employee recovers from his or her injury to the fullest extent possible, in the shortest amount of time. It therefore has broad administrative discretion in choosing means to achieve this goal.<sup>22</sup>

Abuse of discretion is shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from established facts. It is not enough to merely show that the evidence could be construed so as to produce a contrary factual conclusion.<sup>23</sup>

### **ANALYSIS -- ISSUE 2**

The Board finds that OWCP did not abuse its discretion by denying appellant's request for authorization for a left knee injection and right knee surgery.

On March 9, 2020 appellant requested authorization for right knee surgery. On April 2, 2020 appellant requested authorization for a left knee injection.

In a January 30, 2020 report, Dr. Miller noted that an MRI scan of the left knee demonstrated a small free edge tear in the body of the lateral meniscus and low-grade chondral loss in the lateral compartment. He advised that appellant should treat his arthritis with continued therapy, anti-inflammatories, a cortisone injection, and he would attempt to obtain approval for a hyaluronic acid injection.

In a follow-up report dated March 5, 2020, Dr. Miller noted that the MRI scan of appellant's right knee demonstrated a horizontal tear of the posterior horn body of the medial meniscus and mild tricompartmental osteoarthritis. He recommended right knee surgery and a hyaluronic acid injection to the left knee, to which appellant agreed.

In a narrative report dated November 5, 2020, Dr. Miller opined that the left knee injections were necessary to avoid surgery.

As noted, the only restriction on OWCP's authority to authorize medical treatment is one of reasonableness.<sup>24</sup> In the instant case, appellant did not submit evidence to support that the requested left knee injection and right knee surgery were medically necessary to treat his accepted conditions. The Board thus finds that OWCP did not abuse its discretion by denying her request

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<sup>21</sup> *B.I.*, Docket No. 18-0988 (issued March 13, 2020); *see also Daniel J. Perea*, 42 ECAB 214, 221 (1990) (holding that a abuse of discretion by OWCP is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or administrative actions which are contrary to both logic, and probable deductions from established facts).

<sup>22</sup> *D.S.*, Docket No. 18-0353 (issued May 18, 2020).

<sup>23</sup> *Id.*; *P.L.*, Docket No. 18-0260 (issued April 14, 2020); *L.W.*, 59 ECAB 471 (2008).

<sup>24</sup> *Supra* note 22; *see also A.W.*, Docket No. 14-0708 (issued January 2, 2015).

for authorization for physical therapy.<sup>25</sup> Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met his burden of proof to expand the acceptance of the claim to include additional conditions of left knee primary osteoarthritis and a right medial meniscus tear as causally related to the accepted August 23, 2019 employment injury. The Board further finds that OWCP did not abuse its discretion by denying appellant's requests for authorization of a left knee injection and right knee surgery.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the December 3, 2020 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: March 3, 2022  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>25</sup> *D.C.*, Docket No. 18-0080 (issued May 22, 2018); *B.J.*, Docket No. 17-1825 (issued February 23, 2018).